

Group II: Claims 1, 2 and 6-16, drawn to an expression cassette comprising an anti-HGD sequence, vectors, host cells and transformed plants comprising an anti-HGD sequence and a method of making said transformed plant;

Group III: Claims 1-5 and 7-16, drawn to an expression cassette comprising an HPPD sequence, vectors, host cells and transformed plants comprising an anti-HGD sequence and a method of making said transformed plant; and

Group IV: Claims 17 and 18, drawn to methods of obtaining tocopherols by using expression cassette comprising an HPPD gene or an anti-HGD gene, or both.

As recited under PCT Rule 13.1:

“The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement for unity of invention”).”

When a group of inventions are determined to exist in a single application, unity of invention is found among the group when there is a single technical relationship among those inventions involving one or more of the same or corresponding technical features. The expression “special technical features” shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art (see Rule 13.2).

Applicant respectfully asserts that the application meets the requirement for unity of invention and that no restrictions should be imposed.

It is alleged in the Office Action that the inventions of Groups I-IV do not relate to a single inventive concept under PCT Rule 13.1 because, under Rule 13.2, they lack the same or corresponding special technical feature. The examiner elaborates that: “The special technical feature of an expression cassette comprising an HPPD gene was known I the art” as shown by Norris et al. (Office Action, page 2). Applicant respectfully disagrees.

The examiner has, without explanation, selected one of a number of different possible technical features of applicant’s invention. This is improper. All claims include at least two technical features, namely, “a coding nucleic acid sequence for HPPD or for a functional equivalent thereof,” and “a nucleic acid sequence which is capable of inhibiting HGD activity” (see claim 1). Both could be considered special technical features within the meaning of PCT Rule 13.2, and

defining features of all claims. By choosing the former in isolation and ignoring the later as well as the combination, the examiner has not complied with Rule 13.1.

Applicant also respectfully notes that no disunity was declared during examination of the PCT application by the International Preliminary Examining Authority. This establishes a *prima facie* case for the presence of unity of invention. Although the presumption is rebuttable, no rebuttal is provided.

Accordingly, the PTO has failed to establish the existence of more than a single invention and, further, failed to establish that should more than one invention within the meaning of PCT Rule 13.1 exist, there exists a special technical feature that unites each and every claim. Thus the entire requirement should be withdrawn.

If the entire Restriction Requirement is not withdrawn, in the alternative, applicant respectfully requests that the claims of Groups II and III be combined and examined together. The alleged special technical feature of the Group II claims, namely anti-HGD sequences, is also present in the Group III claims. Accordingly, to examine this additional group would seem to be required here. Furthermore, to include the Group III claims would only involve the examination of three additional claims (*i.e.* claims 3-5).

Thus, applicant respectfully requests that the Groups II and III claims be recombined and examined together.

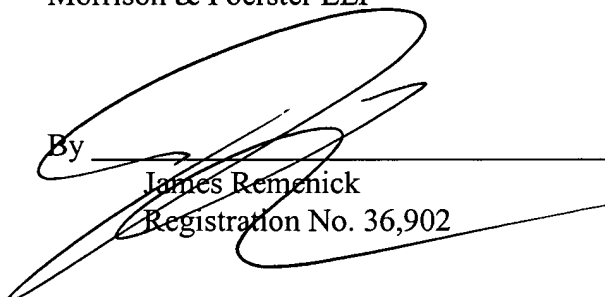
Conclusion

The application is in condition for examination and the prompt issuance of an Office Action is respectfully requested. If there are any additional fees due with the filing of this Response, including any additional fees for a further extension of time, not herein accounted for, applicant respectfully requests that extension and also requests that any and all fees due be charged to Deposit Account No. 03-1952.

Respectfully submitted,
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By


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